

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN F. PEOPLES	:	CIVIL ACTION NO. 08-2024
	:	
Plaintiff	:	
	:	
vs.	:	
DISCOVER FINANCIAL SERVICES, INC.	:	
and DISCOVER CARD SERVICES, INC.	:	
trading as DISCOVER CARD	:	
and	:	
GINGER DAYLE, GINGER DAYLE	:	
PRODUCTIONS and NEW CITY	:	
STAGE COMPANY	:	
	:	
Defendants	:	

ANSWER TO COUNTERCLAIM

Plaintiff/Counter-Defendant John F. Peoples (hereinafter "Peoples"), by way of Answer to the Counterclaim filed by Defendant/Counterclaimant Ginger Dayle (hereinafter "Dayle"), hereby pleads the following.

1. Admitted only that Dayle has filed a Counterclaim.
2. Peoples responds by incorporated herein all the averments in his Complaint.
3. Denied as stated. Peoples was Dayle's customer. However, the term "fitness instruction" is misleading.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.

11. Denied.

WHEREFORE, Peoples demands Judgment against Dayle, dismissing the Counterclaim with prejudice in its entirety, with costs.

AFFIRMATIVE DEFENSES

1. Failure to state a claim upon which relief may be granted.

1A. This defense goes for all causes of action alleged.

1B. There is no cause of action for “sexual harassment” even assuming Dayle’s allegations were true, which they are not. A customer, by definition, cannot sexually harass a service provider.

1C. There is no cause of action for “emotional distress” even assuming Dayle’s allegations were true, which they are not. The acts alleged by Dayle do not meet the high level of outrageousness required by the cause of action for infliction of emotional distress; and Dayle’s alleged injury does not meet the high level of distress required by the cause of action.

2. Consent. Dayle consented to be touched to the extent any touching occurred.

3. Incapacity: Peoples is legally blind and physically incapable of committing a battery or other physical assault-like behavior.

4. Assumption of Risk; comparative negligence; comparative fault.

5. Unclean hands.

6. There is no causal link between acts and omissions alleged and any damages alleged.

5. There is a failure to prove damages.

6. Damages, if any, were due Dayle’s own fault, or the fault of a third party over whom answering party has no control or responsibility.

7. Failure to mitigate damages.

8. Damages, if any, were caused by superseding causes for which answering party is not responsible or liable.
9. Estoppel, waiver and/or release.

WHEREFORE, Peoples demands Judgment against Dayle, dismissing the Counterclaim with prejudice in its entirety, with costs.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands Trial by Jury for all issues in this case.

By: LAW OFFICES OF JOHN F. PEOPLES
/s/ Stephen Cristal
Stephen H. Cristal, Esquire, ID# 95020, attorney for PLAINTIFF
2701 West Chester Pike, Suite 104, Broomall, PA 19008
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Date: July 25, 2008

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and	:	
GINGER DAYLE, GINGER DAYLE	:	
PRODUCTIONS and NEW CITY	:	
STAGE COMPANY	:	
	:	
Defendants	:	

CERTIFICATION OF SERVICE

I the undersigned certify that on the date indicated below I served true and correct copies of the attached legal papers on all parties to this action, or their attorneys if applicable, by sending them via US Mail postage prepaid to:

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Attorney for Ginger Dayle, Ginger Dayle Productions, New City Stage Company

By: LAW OFFICES OF JOHN F. PEOPLES
/s/ Stephen Cristal
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Phone: 610-356-2711, Fax: 610-356-2763, Email: johnfpeoples@yahoo.com

Date: July 25, 2008